intrinsic characteristics, or its natural advantages, or its artificial improvements, land is peculiarly adapted to some particular use, might not this justify evidence as to value for such use? Whereas if the particular use in question be remotely prospective or speculative, or depends upon too many suppositions or hypotheses which must be realized before the contemplated use becomes practicable, then the introduction of the evidence ought not to be justified.

J. C. A.

GUARANTY: EFFECT OF EXECUTORY AGREEMENT TO GUARANTEE.—In *Postlethwaite v. Minor*[1] A, who with B was organizing a corporation, agreed in writing to "indorse and guarantee" bonds of the corporation to be issued to B. No written guarantee was in fact placed upon the bonds but they were issued to B, and by him assigned to C, who sued A as guarantor. The court held that there could be no recovery against A as guarantor. The agreement was to guarantee the bonds when issued, and, as an agreement, was binding at once, not being a mere offer; but as a guaranty it was ineffective since the parties evidently contemplated a further act, that is, writing the guaranty on the bonds themselves, and so, under the familiar rule of contracts,[2] the guaranty would not be complete until the act was done. This situation is to be distinguished from an offer to guarantee another's debt if a third person will extend credit, which is generally regarded as accepted by extending the credit requested.[3] Here B was already bound to advance his capital and the corporation to issue its bonds.

But does A escape all liability on his contract? Had B retained the bonds it is admitted that B would have had an action, either for specific performance or for damages, and it would seem to be immaterial whether he sued A as guarantor or for breach of the agreement to guarantee, the measure of damages being the same in either case.[4] But having disposed of the bonds he can show no damage for breach of the agreement, nor would he be entitled to specific performance since he no longer has an interest in the subject matter.[5] The court holds that the action must be brought on the contract of guaranty itself. C is not a party to the agreement, it was not assigned to him, nor is he entitled to sue as a third person for whose benefit the contract was made. The contract was made for B's benefit, and only incidentally, if at all, for the benefit of any stranger. C cannot claim an estoppel since B was guilty of no misrepresentation, relied on by C to his detriment. B merely failed to live up to his agreement and the terms of the agreement were perfectly plain to C.

---

[1] (July 6, 1914), 48 Cal. Dec. 75, 142 Pac. 55.

[2] Bishop v. Eaton (1894), 161 Mass. 496, 37 N. E. 665.

[3] Summers v. Mutual Life Ins. Co. (1914), 12 Wyo. 369, 75 Pac. 937, 66 L. R. A. 812.

[4] Levy v. Wagner (1902), 29 Tex. Civ. App. 98, 69 S. W. 112 (agreement to indorse a note to give it security). See also Petty v. Gacking (1911), 97 Ark. 217, 133 S. W. 832, 33 L. R. A. (N. S.) 175.

[5] Crocker v. Higgins (1829), 7 Conn. 342.

The court approves the doctrine that a completed guaranty on a separate instrument would not pass without assignment. The better view seems to be that a guaranty on the obligation itself will pass without special assignment,[6] at least if the instrument be negotiable, but a guaranty on a separate instrument is generally held not to pass in this way.[7] It would seem, however, that such guaranties are intended to give security to the obligation, whether written on the instrument itself or on a separate paper, and whether the instrument be "negotiable" or not, and so are intended to inure to the benefit of any bona fide holder of the obligation. They have, in some cases, been held to pass as incidents to the obligation,[8] under the rule of equity that assignment of the debt carries with it all securities.[9] This seems to be a more reasonable view than to hold that guaranties, like warranties, are restricted to the first vendee, and must be specially assigned to pass to assignees of the debt. But, as has been shown, there was no completed guaranty in the principal case, and it is doubtful whether an executory contract to sign a guaranty can be held to be a subsisting security, and so pass with the obligation. It appears, then, that A has received his consideration, has actually, though not legally, misled the purchaser of the bonds, and still escapes liability on his contract. A possible remedy might be for B to assign to C the contract to guarantee the bonds and for C to bring his action on that agreement.

J. S. M., Jr.

HIGHWAYS: EXTENT OF POWER TO REGULATE USE BY AUTOMOBILES.—In sustaining the validity of the code section[1] requiring the driver of an automobile, or other vehicle, to stop and render assistance and give his name and license number to any person struck, or the occupants of any vehicle collided with, the District Court of Appeal for the Second District, in *People v. Diller*,[2] said that the driver of an automobile in using the highway is in the exercise of a privilege, not a right, and that the legislature may impose such conditions as it sees fit for permitting such use. To this point the court cites and approves a decision of the New York Court of Appeals.[3] In general, all vehicles have a right to use the

---

[6] Lemmon v. Strong (1890), 59 Conn. 448, 22 Atl. 293, 12 L. R. A. 270.

[7] McLaren v. Watson's Exrs. (1841), 26 Wend. 425, 37 Am. Dec. 260; but see dissenting opinion of Verplanck, Senator, for statement of the view that such guaranties should pass with the debt.

[8] Craig v. Parkis (1869), 40 N. Y 181, 100 Am. Dec. 469; Union Oil Co. v. Maxwell (1889), 33 Ill. App. 421.

[9] Hurt v. Wilson (1869), 38 Cal. 263. See also Duncan v. Hawn (1894), 104 Cal. 10, 37 Pac. 626 (statutory lien on threshing machines for labor passes to assignee of the claim).

[1] Cal. Pen. Code, § 367 c.

[2] (June 17, 1914), 18 Cal. App. Dec. 899, 142 Pac. 797.

[3] People v. Rosenheimer (1913), 209 N. Y. 115, 102 N. E. 530, 46 L.